

COURT OF APPEALS  
DIVISION TWO

¶1 Appellant Michael Eugene Barnes, Jr., was charged with first-degree murder, attempted first-degree murder, aggravated assault with a deadly weapon or dangerous instrument, and first-degree burglary. A jury found him guilty of second-degree murder, attempted second-degree murder, assault, and criminal trespass. The trial court sentenced him to presumptive, consecutive prison terms of sixteen and 10.5 years for the first two

counts and time served for the remaining counts. Barnes contends that the court erred when it denied his motion for judgments of acquittal pursuant to Rule 20, Ariz. R. Crim. P., 17 A.R.S. Finding no error, we affirm.

¶2 We view the evidence presented in the light most favorable to sustaining the convictions. *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003), *supp. op.* 206 Ariz. 153, 76 P.3d 424 (2003). So viewed, the evidence established that Barnes had had an argument over the telephone with his former girlfriend, Tracy F. After Tracy went to Barnes's home to pick up their son, the two continued to argue, and Barnes threw a rock at Tracy's car. A few days later, the two again argued over the telephone, and Barnes threatened to shoot her. Thereafter, Barnes went to Tracy's home, where she lived with her boyfriend Eugene, Eugene's daughter, and children of Tracy and Barnes. Barnes shot at Tracy but did not hit her and shot and killed Eugene. At trial Barnes denied he had shot anyone. He maintained Carlos R. had accompanied him to Tracy's home, had hit Eugene, and that Carlos and two other companions had been in the living room with Eugene when Eugene was shot. The trial court denied Barnes's motion for judgment of acquittal, which he made at the close of the state's case and renewed before closing arguments.

¶3 A motion for judgment of acquittal should be granted only if "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20; *see also State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (judgment of acquittal appropriate only if there is complete absence of substantial evidence supporting conviction). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could

accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will not disturb a trial court's denial of a motion for a judgment of acquittal except for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007). We will reverse “only if there is ‘a complete absence of probative facts to support a conviction.’” *State v. Alvarez*, 210 Ariz. 24, ¶ 10, 107 P.3d 350, 353 (App. 2005), *quoting Mathers*, 165 Ariz. at 66, 796 P.2d at 868. In determining whether substantial evidence exists, we view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdict. *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005). “If reasonable minds can differ on the inferences to be drawn from the evidence, a trial court has no discretion to enter a judgment of acquittal and must submit the case to the jury.” *Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d at 1056.

¶4 Barnes argued below there was insufficient evidence to support convictions of the charged offenses because “there [wa]s . . . no direct evidence that [he] shot anyone.” He also questioned “the quality and credibility of the witnesses . . . along with the accuracy of their testimony.” Barnes essentially reiterates these contentions on appeal. He argues the deoxyribonucleic acid (DNA) evidence “clearly places Carlos . . . as the man with whom [Eugene had] fought” and points to the fact that, when Eugene was asked by police officers if he knew who had shot him, he purportedly indicated he did not.

¶5 Evidence may be substantial whether circumstantial or direct. *See State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981). Additionally, it is for the jury as the trier of fact to weigh the evidence, resolve conflicts in the evidence, and assess the credibility of witnesses. *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005); *see also State v. Rivera*, 210 Ariz. 188, ¶ 11, 109 P.3d 83, 85 (2005). Based on the following evidence, reasonable jurors could find Barnes intentionally had caused Eugene’s death, without premeditation, *see* A.R.S. § 13-1104(A), and had attempted to cause Tracy’s death, *see* A.R.S. § 13-1001(A).<sup>1</sup>

¶6 Tracy testified Barnes had argued with her over the telephone and threatened to shoot her. Later, while she and her children were in their bedrooms and Eugene was in the livingroom watching television, she had heard loud pounding and then had heard Barnes come into the house swearing. Barnes’s daughter testified she had heard noise as well and had seen Barnes jump over a coffee table. She had also seen a gun in Barnes’s hand as he walked down the hallway and testified she had not seen anyone else there.

¶7 Tracy further testified she had heard Eugene respond to Barnes, had heard five gunshots after that, and had then telephoned 911. While doing so, the door to her bedroom opened. Although she could not see anyone, she heard Barnes say, “[I]t’s your turn now, bitch,” and shots were fired that hit her bed. After leaving the bedroom, Tracy found

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<sup>1</sup>Barnes primarily focuses on the sufficiency of the evidence to support the second-degree murder and attempted second-degree murder convictions, not the remaining convictions for assault and criminal trespass.

Eugene lying face down with bullet holes in his back. He was taken to a hospital where he died from multiple gunshot wounds.

¶8 The state called as witnesses three men who testified they had accompanied Barnes to Tracy's residence the evening of the shooting. One of them, Carlos, stated he had seen Barnes enter the home and become involved in a "struggle," had heard gunshots, and had seen Eugene fall face-down. The two other witnesses testified they had heard shots fired, and all three said Barnes had a gun when he returned to his car. All three testified Barnes had warned them not to tell anyone what happened, and Carlos stated Barnes had told Carlos's girlfriend that he had shot someone. At the close of the state's case, the trial court denied Barnes's motion for judgments of acquittal on all counts.

¶9 Barnes testified in his own defense, denying he had been the shooter and asserting Carlos must have shot Eugene. He also relied on the testimony of Eugene's daughter, who knew Barnes and what he looked like but testified she had seen someone come into the house whom she did not know. On cross-examination, however, Eugene's daughter admitted she had told police the hallway was dark and she had not had a good look at the person. Additionally, Barnes relied on the testimony of one of the police officers who had arrived on the scene shortly after the incident. That officer stated that Eugene had shaken his head indicating a negative response when asked if he knew who had shot him. But the officer clarified he did not know if Eugene had been responding to his question or to medical personnel who were also talking to him or if he had moved his head involuntarily.

¶10 Additionally, a criminalist testified that, after analyzing Eugene’s cuts and nail scrapings, he could not eliminate Carlos as a contributor of DNA found on Eugene but that the DNA did not belong to Barnes. Although Barnes claims that “DNA evidence clearly places [Carlos] as the man with whom [Eugene] fought,” testimony during trial revealed nothing more than the fact that Carlos could not be excluded as a source of the DNA found underneath Eugene’s fingernails. It was also possible that someone other than Carlos had left the DNA.

¶11 It was for the jury to resolve the conflicts in the evidence and to decide whether to believe Barnes, which we can infer it did not. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004) (“Although the record contains some conflicting evidence, it was for the jury to weigh the evidence and determine the credibility of the witnesses.”). While no one actually saw Barnes shoot Eugene or shoot in Tracy’s direction, there was an abundance of circumstantial evidence that supported the inference that Barnes had shot at both of them, killing Eugene and striking Tracy’s bed. Accordingly, the trial court did not abuse its discretion in denying Barnes’s motion for judgment of acquittal.

¶12 The convictions and the sentences imposed are affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge